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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/628,061 | 07/25/2003 | Christopher John Williams | 5175-147 | 4153 |

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| EXAMINER |
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VALENTI, ANDREA M

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| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,061

Applicant(s)

WILLIAMS, CHRISTOPHER JOHN

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-13, 15, 16 and 18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5, 7, 8, 10-13, 15, 16, and 18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 8, 10-13, 15, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,032,612 to Williams in view of U.S. Patent No. 5,158,038 to Sheeks et al and U.S. Patent No. 5,784,992 to Petite et al.

Regarding Claims 1, 8, and 11, Williams teaches a method of introducing a substance in an avian egg inherently removed from an incubator, comprising: forming an opening in the shell (Williams Fig. 8 #76) with a tubular punch having an internal bore (Williams Fig. 6 #61 and 60; inserting an injection device through the opening and into an interior portion of the egg, wherein the injection device comprises an elongated needle, wherein the needle comprises a hollow tube having a free end (Williams Fig. 6 #90); releasing a substance into the egg via the needle; retracting the injection device from the egg; and applying a sanitizing fluid to the needle to kill pathogens attached thereto (Williams Col. 8 line 52-61 and claim 8).

Williams is silent on applying a sanitizing fluid to the shell of the egg to kill pathogens attached thereto. However, Sheeks teaches the method step of applying sanitizing fluid to the egg shell when undergoing injection treatment (Sheeks Col. 3 line 19-21). It would have been obvious to one of ordinary skill in the art at the time of the

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invention to modify the teachings of Williams with the teachings of Sheeks to prevent cross contamination to other eggs as taught by Sheeks (Sheeks Col. 3 line 14-15; Col. 2 line 45-48; Col. 1 line 46-47, 54-57, 63-65).

Williams as modified teaches a 25 gauge needle, but is silent on the needle having thickness that is smaller than 20 gauge. However, Petite teaches it is old and notoriously well-known in the art to use various needle gauges including 20 gauge for egg injection (Petite Col. 6 line 62-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Williams with the teachings of Petite since the modification is merely a change in size to accommodate larger or smaller eggs for larger or smaller apertures and does not present a patentably distinct limitation.

Williams as modified does not explicitly teach that the cross-sectional area of the elongated needle is less than or equal to forty percent (40%) of a cross-sectional area of the internal bore of the tubular punch. However, Williams inherently teaches this as illustrated in Williams Fig. 8, #290a. Since there are three needles depicted in one bore of Williams #80, the cross sectional area element #290a (i.e. the elongated needle) inherently is less than 40% of the cross sectional area of element #80. Regarding the remaining Williams Figs. the examiner maintains that modifying the cross-sectional area of the needle in relation to the cross-sectional area of the bore is merely a change in size derived through routine tests and experimentation to optimize the desire flow volume and rate of the sanitizing fluid and does not present a patentably distinct limitation.

Regarding Claim 2, Williams as modified teaches the sanitizing fluid is applied to substantially the entire surface of the egg shell (Sheeks Col. 3 line 14-15; Col. 2 line 45-48; Col. 1 line 46-47, 54-57, 63-65)..

Regarding Claims 3-5, 12-13, and 16, Williams as modified teaches the free end is angled with respect to a longitudinal axis the tube and has an opening surrounded by a planar, peripheral surface; the free end angled between about thirty degrees and about sixty degrees with respect to the longitudinal axis of the tube; and the free end is angled by about forty-five degrees (45 degrees) with respect to the longitudinal axis of the tube (Williams Fig. 7 and 9 #490b and 190b). Although Williams does not numerically teach the degrees in which the needle is angled, he does teach that the needle is angled and according to his figures the needles are illustrated with a 45 degree angle. Modifying the needle angle degree is an obvious modification of one of ordinary skill in the art through routine tests and experimentation since various needle angles are old and notoriously well-known and the selection of a particular angle is merely a design choice for desired puncturing and removal capabilities as taught in Williams Fig. 10 #590b).

Regarding Claims 7 and 15, Williams as modified teaches wherein the sanitizing fluid is applied to internal and external portions of the tubular punch (Williams Col. 8 line 51-61).

Regarding Claims 10 and 18, Williams as modified teaches wherein the tubular punch (Williams #80) has an internal bore (Williams Fig. 6), but is silent wherein a cross-sectional area of the elongated needle less than or equal to forty percent (40%) of

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a cross-sectional area of the internal bore of the tubular punch. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Williams since the modification is merely a change in size, i.e. an engineering design choice for a desired volume flow rate of the fluid derived through routine laboratory tests and experimentation to optimize the application of the system and does not present a patentably distinct limitation.

Response to Arguments

Applicant's arguments filed 26 July 2004 have been fully considered but they are not persuasive.

Examiner maintains that applicant's claim limitations do not patentably distinguish over the teachings of the cited prior art as discussed in the preceding paragraphs. Examiner maintains that merely changing the size of the needle, the size of the internal bore, or the needle angle degree is an obvious modification derived through routine tests and experimentation to optimize system and does not present patentably distinct limitations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

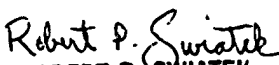
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

30 September 2004

 for
ROBERT P. SWIATEK
PRIMARY EXAMINER
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